

# **Community Action Handbook**

## **Liquor License Sanctions**

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**201 W. Colfax Ave., Dept. 801**  
**Denver, CO 80202**

**Park Hill Community Justice Initiative**  
*in cooperation with*  
*Denver City Attorney*  
*Park Hill Community Justice Council*

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## **Introduction**

In many Denver neighborhoods, residents complain about problem liquor establishments. While most establishments are law abiding and respectful of the residents in the area, some are not "good neighbors". Disruptive and unruly patrons, a pattern of sale to minors and visibly intoxicated patrons, traffic, noise, and congestion problems are some of the primary complaints associated with these businesses. Community members are also frustrated that the legal system does not provide an effective forum for residents to express how these problematic liquor establishments impair their safety and security. These concerns may be due to the increasing number of liquor licensed establishments in the Denver Metro area. In 1996 there were 804 licensed establishments and by April 18, 2002 there were 1,304 licensed establishments.<sup>1</sup>

There are two principal legal steps in the issuance and regulation of liquor licenses. The first is the initial application for the license, which is addressed in another handbook produced by the Community Justice Unit, entitled "New Liquor Licensing Procedures." The second is the process of sanctioning a licensee for conduct that violates the State Liquor Code or other laws, which is the subject of this handbook.

In response to these concerns, the Denver District Attorney's Community Justice Unit prepared these materials in cooperation with the Denver City Attorney and the Denver Department of Excise and Licenses. We hope this guide can serve as a starting point for neighborhood organizations and activists in determining how to effectively participate in the liquor license sanctioning process.

## **Acknowledgements**

This guide was written by Susan Motika, Director of the Denver District Attorney's Community Justice Unit and Melissa Boutin, a third year law student at the University of Denver College of Law. We could not have accomplished this without editorial assistance, research, comments, and inspiration from Kurt Stiegelmeier, former Denver Assistant City Attorney; Mark Nachtigal and Kathi Anderson of The Unsinkables Neighborhood Organization; Park Hill activists Geneva Goldsby and Odell Holleman; John Poley, Denver Assistant City Attorney; Michele Wheeler, Park Hill Community Justice Advocate; and Helen Gonzales, Director, Excise and Licenses, City of Denver.

## **Complaint Process**

When the Department of Excise and Licenses receives a complaint concerning a violation at a licensed premise, the Denver Police Department detective assigned to the Department of Excise and Licenses first evaluates the complaint.<sup>2</sup> As there is no formal complaint form used by the Department of Excise and Licenses, it is best for community members to submit complaints by letter and fax. (The address is Department of Excise and Licenses, 201 W. Colfax Ave., Dept. 206, Denver, CO 80202; the telephone number is 720-865-2800; and the fax is 720-865-2882.) There are several possible courses of action the detective may take. These include:

- further investigation
- referral to another government agency
- referral to the Denver City Attorney for possible legal action
- meeting with the licensee to discuss voluntary resolution of the complaint<sup>3</sup>

For complaints that are determined to warrant prosecution, the Department of Excise and Licenses sends a notice of a "show cause" hearing including the date, time and location where the licensee must "show cause" as to why the liquor license should not be suspended or revoked.<sup>4</sup> The city has to prove that the licensee (or employee) committed the violation. Witnesses are sworn under oath; and the hearing officer may also issue subpoenas to require people to be present or produce documentation necessary to the introduction of evidence supporting or refuting the complaint.

The hearing officer then issues a Recommended Decision and both sides can file objections within 10 days of the date of the decision. After any objections are received, the director issues a final decision. If the licensee is found to have not violated the law or regulation charged in the complaint, the charge will be dismissed.<sup>5</sup> Although there are no strict guidelines in the State Liquor Code for the setting of sanctions, the issues generally reviewed in determining any sanction include:<sup>6</sup>

- Past violations
- Number and frequency of violations
- Severity of the violation
- If the violation was committed negligently or knowingly
- If falsehood or fraud was involved
- Whether the licensee made efforts to voluntarily correct the problem
- Whether the licensee was prompt in correcting the problem
- Likelihood of recurrence

## Common Violations

There are many reasons why liquor licenses are suspended, revoked or denied renewal. The primary reasons for holding administrative hearings include any alleged violations of federal, state, or municipal law, or liquor code regulation. At the administrative hearing, the City Attorney presents evidence of the violation and a neutral hearing officer determines what penalty, if any, the licensee should receive for the violation. Some of the more common violations of the law in the liquor-licensing arena include:

- Sale of liquor to persons under 21<sup>7</sup>
- Sale or service to a visibly intoxicated person<sup>8</sup>
- Failure to maintain legal possession of the premises (lease, ownership, rent, etc)<sup>9</sup>
- After hours sale or consumption of alcohol at a tavern or restaurant<sup>10</sup>
- Transfer of stock (when licensee is a business) without notice to department<sup>11</sup>
- Removal of drinks from premises of tavern or restaurant<sup>12</sup>
- Conduct on the establishment<sup>13</sup>
- Modification (change of physical property or type of business) of premises without prior written approval from the department<sup>14</sup>
- Employees begging, procuring or soliciting customers to buy drinks<sup>15</sup>
- Books and records not available for police inspection<sup>16</sup>
- Premises not available for inspection<sup>17</sup>

However, as described below, the licensee's action does not have to violate a liquor code regulation or state statute to be a violation that is subject to sanction by the Department of Excise and Licenses.

## Offensive Conduct

In addition to liquor related violations, a licensee may also be subject to discipline for any violation of the criminal code even if the violation is not liquor related. For example, in Continental Liquor Co. vs. Kalbin, the licensee was convicted of sexual assault on a thirteen-year-old employee.<sup>18</sup> The court upheld the boards' revocation of the license "inasmuch as [the licensee's] president's acts would constitute a violation of the criminal codes, and since such a violation is presumptively offensive to the senses of the average citizen. . . ."<sup>19</sup> Conduct on the

licensed premise "that is not criminal but is indecent, disorderly, lewd or offensive to the average citizen or residents of the neighborhood" is subject to evaluation by the department for possible suspension or revocation.<sup>20</sup>

Regulation 47-900(A) (2002) states,

Each person licensed under Articles 46, 47, and 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner; and shall not permit on the licensed premises the serving or loitering of a visibly intoxicated person or habitual drunkard, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct (as defined by and provided for in Colorado Revised Statute 18-9-106)<sup>21</sup>, nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

The licensee can be found to have knowledge of the conduct even if the licensee did not participate in or authorize the offensive conduct. If an employee participates in offensive conduct, the licensee is automatically responsible for that act.<sup>22</sup> In addition, the licensee may also be responsible for offensive conduct committed by patrons. If the offensive conduct had occurred before and the licensee failed to do anything to prevent it from recurring, the licensee may be deemed to have "knowledge" of the act, and thus, be subject to sanctioning. Second, if the offensive conduct occurs in the open, where a reasonable person could see it, the licensee may be found to have "knowledge" of this act, whether or not he or she actually witnessed it.

Although the legal authority for this section has been challenged, the Colorado Supreme Court has decided that the regulation is constitutional and "appropriate based on crime prevention considerations directly related to the promotion of public safety and welfare."<sup>23</sup>

## Summary Suspension

The department may suspend the license prior to any hearing for up to 15 days (a summary suspension).<sup>24</sup> "Any license may be summarily suspended by the issuing licensing authority without notice pending any prosecution, investigation, or public hearing."<sup>25</sup> For example, in New Safari Lounge, Inc. vs. City of Colorado Springs, the establishment's license was suspended pending a hearing regarding a violation of the liquor code. The Colorado Supreme Court has found that the suspension is a constitutionally valid method of acting pending the hearing.<sup>26</sup>

If such a summary suspension is imposed, which is very rare, a hearing must be scheduled within 15 days. At the hearing, the City Attorney must prove that the violation occurred and the licensee can present evidence in his/her defense.<sup>27</sup> The recommended decision by the hearing officer will be issued immediately after the hearing and mailed to the licensee.<sup>28</sup> Objections can be filed by the City Attorney and by the licensee. After review of any objections, the Director of the Department of Excise and Licenses will issue the final decision.<sup>29</sup>

## Citizen Participation

There are two different times when citizens can become involved in the process of sanctioning liquor licensees. The first time is after a license has been approved and the licensed establishment has begun operating in the community. The second is after an establishment has been charged with a violation. During both periods, there is opportunity for community members to actively participate in the process.

### Pro-active involvement

The primary way community members can be involved before any violation by the licensed establishment is by being active in the original licensing of the establishment. Community member participation in this process is detailed in the community handbook titled *New Liquor Licensing Procedures*, available through the Denver District Attorney's Community Justice Unit.

Once a license is issued, community members can also contact the Department of Excise and Licenses concerning any alleged violations of law or regulation.<sup>30</sup> These complaints are first referred to the Denver Police detective assigned to the department. Although the complaint may be referred for further action after an investigation, the department may determine that mediation is a useful strategy where the complaints are for conduct such as:<sup>31</sup>

- inappropriate behavior of patrons when they leave the licensed premises
- noise
- trash and litter
- parking

If mediation is conducted, upon agreement by the licensee and the neighbors, a Department of Excise and Licenses hearing officer serves as mediator.<sup>32</sup> The goal of the mediation is to reach a mutually acceptable written agreement and possibly become a part of the license depending upon the circumstances involved.<sup>33</sup>

A procedure suggested by former Assistant City Attorney Kurt Stiegelmeier, during a recent sanctioning hearing for a Capitol Hill licensee, was for community members to use affidavits to document violations committed by licensed establishments. If the complaint is regarding a violation of the law (such as sale to a minor or a visibly intoxicated person), the complaint would need to include specific information. (An affidavit is a signed statement made under the pains and penalties of perjury that can be admitted in the hearing as evidence.) The individual writing the affidavit must disclose his/her identity, contact information, and be willing to testify regarding the activity he/she witnessed. Such an affidavit would need to include detailed information such as:

- what particular alcoholic beverage was involved
- what indicated that the person was visibly intoxicated or under age
- date and time of the sale of alcohol
- what the clerk/server looked like



### Hearing involvement

The department may issue a "show cause" order to any licensee alleged to have committed any violation of the law, ordinance or liquor code.<sup>34</sup> At this hearing, the licensee must present evidence (show cause) why the license should not be suspended or revoked.<sup>35</sup>

At the administrative hearing, the city must prove the accusation that was the basis for the "show cause" order.<sup>36</sup> The Department of Excise and Licenses has the authority to place people under oath and issue subpoenas for individuals and papers that are necessary for the hearing.<sup>37</sup> First, the City Attorney's Office presents its case through the use of evidence and witnesses. The licensee can cross-examine witnesses for the City.<sup>38</sup> Then, the licensee (who may use an attorney) can present evidence as a defense including information to mitigate the charge.<sup>39</sup>

If the hearing officer finds that the licensee did commit "the charged violation or any other violation, evidence and statements in aggravation of the offense shall also be permitted"<sup>40</sup> If the licensee is found not to have committed the violation he/she was charged with, but a separate violation of a law, rule or regulation, the licensee is allowed to present evidence to defend or explain that incident *if they are prepared at the hearing to do so.*<sup>41</sup> If the licensee is not prepared to do so, the hearing can be recessed for up to 10 days. However, prior to obtaining this continuance, the licensee must disclose to the hearing officer the substance of any evidence that is not then available. If such a recess is granted, the hearing continues as if there were no break.<sup>42</sup> If the licensee is not found to have violated any law, rule or regulation, the charges will be dismissed by the hearing officer.<sup>43</sup>

Citizen involvement at the "show cause" hearing is primarily testimony used by the city attorney to present evidence of the charge. Once a violation is found to have occurred, then the role of citizens expands to include testimony and petitions as evidence of aggravation for the hearing officers' consideration in determining the penalty.

### Challenges and opportunities for citizen involvement

The Unsinkables Neighborhood Organization in Capitol Hill had a long history of problems with the property at 1300 Pearl Street, which had operated as a liquor store for approximately 20 years. Neighborhood residents had complained about the operation of the then Howerds Liquor Store for many years. Less than a year after its license was renewed in 1996, Howerds was allowed to sell the license rather than face sanctioning for a third liquor code violation. The license was sold to Bonanza Liquors, but residents' problems did not abate.

In June 2002, the owners of Bonanza Liquor Store voluntarily surrendered its liquor license immediately before a sanctioning hearing was to take place. While there was, thus, no decision "on the merits," this case is illustrative of the potential opportunities for citizen involvement in the sanctioning process.

The June 2002 sanctioning hearing involved a third violation of selling liquor to a minor. Using Regulation 47-600(D) the City Attorney intended to introduce evidence of a violation that occurred after the violation at issue (there was evidence that the establishment had sold to an intoxicated person after the third violation for selling to minor). A community member and a

Neighborhood Police Officer witnessed the violation and both were prepared to testify regarding the violation.

The City Attorney also intended to use Regulation 47-600(C) to elicit testimony from area residents regarding the effect the establishment had on their everyday quality of life. Regulation 47-600(C) states that once the charged violation, or any other violation, is found to have occurred, "evidence and statements in aggravation of the offense shall also be permitted."<sup>44</sup>

## Sanctions

### Suspension

The Department of Excise and Licenses can order the suspension of a liquor license for up to six months.<sup>45</sup> The State Liquor Code does not specify when or how the suspension must be completed. For example, a suspension can be completed in installments instead of all at once. The suspension can also be delayed to give the licensee time to prepare for closure during the suspension. It is not rare for part or all of the suspension to be deferred (called "in abeyance"), but if the licensee commits another violation the suspension held "in abeyance" is activated. However, the imposition of the suspension does not prevent a sanction for the most recent violation. Upon suspension, the department may order the licensee to post two notices in obvious places that are two-feet long and 14-inches wide with lettering no smaller than ½ inch. Such notices shall state:

**NOTICE OF SUSPENSION  
ALCOHOL BEVERAGE LICENSES ISSUES  
For These Premises Have Been  
Suspended by Order of the  
STATE-LOCAL LICENSING AUTHORITY  
For Violation of the COLORADO LIQUOR/BEER CODE<sup>46</sup>**

### Fines

If the suspension is for 14 days or less, the licensee can petition the Department of Excise and Licenses to pay a fine for part or all of the suspension to avoid the closure.<sup>47</sup> When this petition is filed, it must include the previous six months financial records, including at least the two weeks prior to the projected date of closure. These financial records are then used to determine the daily average gross revenue of the business to determine the amount of the fine. The amount of the fine is the equivalent to 20% of the licensee's estimated gross revenues from the sale of alcohol during the time of the proposed closure of the business (although it cannot be less than \$200 or more than \$5,000).<sup>48</sup> For example:

Gross revenue for 180 days = \$90,000  
 $\$90,000 \div 180 = \$500$  (per day gross revenue)  
 $\$500 \times 14$  day suspension = \$7,000  
 $\$7,000 \times 20\% = \$1,400$  fine

The fine must be paid in full at least two business days before the closure is to begin. A fine can not be substituted for a suspension if the license had been suspended, revoked or if any suspension was stayed by paying a fine in the two years before the date of the complaint that led to the current suspension.<sup>49</sup>

## Compliance Check Violation Penalties

The police department may investigate reports of establishments serving or selling alcohol to individuals under 21 years of age. Should the investigation find that the licensed establishment did sell to a minor, the state regulations have set forth general guidelines for the department to use in determining the sanction.<sup>50</sup>

- First offense - a written warning up to a 15-day suspension (which is eligible for a fine for 14 of the days). However, if the licensee provides training to their employees, it is recommended that they receive a written warning.
- Second offense (within one year) - five to 30 day suspension (if on the first offense no fine was paid, the licensee can now pay a fine) which is eligible to be held in abeyance.
- Third offense (within one year) - 20 to 45 day suspension (no option for fine or abeyance).
- Fourth offense (within two years) - 45 day suspension to revocation.

The regulation states that these guidelines are advisory so the hearing officer is not required to follow them and can consider other factors.<sup>51</sup> (See page 3 for the list of factors considered by the hearing officer in determining the penalty.) However, this issue is currently being evaluated in a Denver District Court case.<sup>52</sup>

## Imposition of New Conditions on License

Colorado statutes state that a license can be denied renewal if the licensee violated a condition or term imposed in a prior disciplinary proceeding.<sup>53</sup> Although not specifically stated, it is implied that the department can impose new conditions on the license in a disciplinary proceeding.<sup>54</sup> If this special condition or term is violated, the Department can refuse to renew the license at renewal.<sup>55</sup>

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<sup>1</sup> These numbers are based upon research conducted by The Unsinkables, a Capitol Hill neighborhood organization, in the Spring of 2002.

<sup>2</sup> Department of Excise and Licenses Policies and Procedures March 2001 at page 18.

<sup>3</sup> See note 2.

<sup>4</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-600(B) (2002).

<sup>5</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-600(E) (2002).

<sup>6</sup> Kurt G. Stiegelmeir, *Administrative Sanctions Against Colorado Liquor Licenses*, 30 *The Colorado Lawyer* 61, 63-64 (December 2001).

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- <sup>7</sup> Colorado Revised Statutes 12-47-901 (2002).
- <sup>8</sup> See note 7.
- <sup>9</sup> Colorado Revised Statutes 12-47-301 (2002).
- <sup>10</sup> See note 7; Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-910 (2002).
- <sup>11</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-304 (2002).
- <sup>12</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-918 (2002).
- <sup>13</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-900(A) (2002).
- <sup>14</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-302 (2002).
- <sup>15</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-920 (2002).
- <sup>16</sup> Colorado Revised Statutes 12-47-701 (2002).
- <sup>17</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-700 (2002).
- <sup>18</sup> Continental Liquor Co. v. Kalbin, 608 P.2d 353, 355 (Colo. 1988).
- <sup>19</sup> See note 18.
- <sup>20</sup> Stiegelmeier, *Suspension or Revocation of Liquor Licenses for Offensive Conduct* 29 The Colorado Lawyer 77, 78 referencing Chroma Corp. v. Adams County, 543 P.2d 83, note 9 at 83, 85-86; 400 Club v. Canjar, 523 P.2d 141, 143 (Colo. App. 1974); Wittenburg v. Board of Liquor Control, 80 N.E.2d 7111, 716 (Ohio App. 1948), cited with approval in Clowns Den v. Canjar, 518 P.2d 957, note 9 at 957, 959; G and B of Jacksonville Inc. v. State Department of Business Regulation, 371 So.2d 139-40 (Fla. 1979); Insight Enterprises Inc. v. Ohio Liquor Comm., 622 N.E. 2d 1145, 1148 (Ohio App. 1993).
- <sup>21</sup> The statute states,
- (1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:
    - (a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or
    - (b) Deleted by Laws 2000, Ch. 171, § 39, eff. July 1, 2000.
    - (c) Makes unreasonable noise in a public place or near a private residence that he has no right to occupy; or
    - (d) Fights with another in a public place except in an amateur or professional contest of athletic skill; or
    - (e) Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting; or
    - (f) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.
  - (2) It is an affirmative defense to prosecution under subsection (1)(b) of this section that the actor had significant provocation for his abusive or threatening conduct.
  - (3) An offense under subsections (1)(a) to (1)(c) of this section is a class 1 petty offense; an offense under subsection (1)(d) of this section is a class 3 misdemeanor; an offense under subsection (1)(e) or (1)(f) of this section is a class 2 misdemeanor.

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<sup>22</sup> Stiegelmeier, *Suspension or Revocation of Liquor Licenses for Offensive Conduct*, 29 The Colorado Lawyer, 77, 78 (2002).

<sup>23</sup> Citizens for Free Enterprise v. Department of Revenue, 649 P.2d 1054, 1065 (Colo. 1982).

<sup>24</sup> Department of Excise and Licenses Policies and Procedures March 2001 at page 18 and Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-602 (A) and (B) (2002).

<sup>25</sup> Colorado Revised Statutes, 12-47-601(2) (2002).

<sup>26</sup> 193 Colo. 428, 567 P.2d 372 (Colo. 1977).

<sup>27</sup> See note 2.

<sup>28</sup> See note 2.

<sup>29</sup> See note 2.

<sup>30</sup> See note 2.

<sup>31</sup> Department of Excise and Licenses Policies and Procedures March 2001 at page 28.

<sup>32</sup> See note 31.

<sup>33</sup> See note 31.

<sup>34</sup> See note 2.

<sup>35</sup> See note 4.

<sup>36</sup> Department of Excise and Licenses Policies and Procedures March 2001 at page 19.

<sup>37</sup> See note 36.

<sup>38</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-601(C) (2002).

<sup>39</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-600 (C) (2002).

<sup>40</sup> See note 39.

<sup>41</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-600 (D) (2002).

<sup>42</sup> See note 41.

<sup>43</sup> See note 5.

<sup>44</sup> See note 39.

<sup>45</sup> Colorado Revised Statutes, 12-47-601(1)(2) (2002).

<sup>46</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-600(F) (2002).

<sup>47</sup> Colorado Revised Statutes, 12-47-601(3)(a).

<sup>48</sup> Colorado Revised Statutes, 12-47-601(3)(b).

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<sup>49</sup> Colorado Revised Statutes, 12-47-601(3)(a)(III).

<sup>50</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-602(A) (2002).

<sup>51</sup> Colorado Code of Regulations 1 C.C.R. 203-2 Regulation 47-604 (2002).

<sup>52</sup> Case #02CU4271

<sup>53</sup> Colorado Revised Statutes 12-47-103(9)(b) (2002).

<sup>54</sup> See note 53.

<sup>55</sup> See note 53.